

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MICHAEL J. AVERY,

Defendant.

Case No. 4:20-MJ-7180 SPM

ORDER

This matter is before the Court on the Government's motion for pretrial detention [ECF No. 4]. The Government charged Defendant with violation of 18 U.S.C. § 2101 (rioting). As grounds for its motion, the Government asserted detention was warranted because of: (1) danger to the community; and (2) flight risk.

The Court held a hearing by video. Defendant appeared along with his counsel. The Government appeared through an assistant United States attorney. Defendant's Pretrial Services officer also appeared.

Pretrial Services filed its Report. The Court provided the parties with additional time to respond to the Report. Defendant filed a memorandum in response to the Pretrial Services Report. Defendant's response does not appear to challenge the factual material in the Report. The Court adopts the material in the Report and incorporates it herein. As stated at the hearing, the Pretrial Services officer recommended detention primarily due to the allegations in the complaint.

The Government proffered the following in support of detention: Defendant is not from St. Louis and has no ties to the community. Defendant travelled from Minnesota to St. Louis for the purpose of initiating riots in St. Louis. Finally, the Government asserts that Defendant is a danger to the community due to the nature of the charge as detailed in the complaint.

Defense counsel proffered the following in support of release: The statements Defendant made on social media are susceptible to more than one interpretation. Defendant is not connected to any specific acts of violence. Defendant is not a flight risk. Defendant resides with his parents and a three-year-old daughter in St. Louis. Defendant is a single father and has a lawn care business. Defendant does not have a significant criminal history.

The Pretrial Services Report discloses the following additional relevant information as follows: Defendant is 28 years old and was born in St. Louis. He is a lifelong resident of the St. Louis area and lives with his parents and daughter in the St. Louis area. Defendant has three siblings all of whom reside in St. Louis. Defendant graduated from high school and has an associate's degree from ITT Technical Institute. Defendant received an SIS and probation in one case in 2010 and another case in 2014. Defendant successfully completed probation in both cases. Neither case involved weapons or narcotics. Defendant has a very minimal arrest record.

Based upon the record adduced at the hearing as well as the Report and the parties' responses thereto, the Court concludes that the Government failed to prove by clear and convincing evidence that Defendant is a danger to the community and a flight risk and that no conditions or combination of conditions of release will reasonably assure Defendant's appearance or the safety of any other person and the community.

Accordingly,

IT IS HEREBY ORDERED that the motion of the Government for pretrial detention of Defendant [ECF No. 4] is **DENIED**.

IT IS FURTHER ORDERED that a bond hearing is scheduled for June 12, 2020 at 9:30 a.m. before the undersigned.

A handwritten signature in blue ink, reading "Patricia L. Cohen", is positioned above a horizontal line.

PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 11th day of June, 2020